ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the matter of:	)	
	)	
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	CS Docket No. 96-133
	)	
	)	

COMMENTS OF TIME WARNER CABLE

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Date: July 19, 1996

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SUMMARY

Since the passage of the Telecommunications Act of 1996 ("1996 Act"), Time Warner has witnessed a brisk escalation of activity and competition from all technologies offering alternative multichannel video programming service Direct Broadcast Satellite ("DBS") service, Satellite Master Antenna Television ("SMATV") services and Multichannel Multipoint Distribution Service ("MMDS") all continue to make significant gains in service availability and subscribership across the country. Cable operators are also faced with an ever-increasing competitive challenge posed by increased investment and system deployments by the local exchange carriers ("LECs") in both their wireline systems and MMDS systems. Further, because of broadcast television's free distribution, broad appeal, and vast resources, it will continue to be a primary video entertainment option for American households.

Indeed, the passage of the 1996 Act will surely accelerate competition for video programming delivery. For example, the repeal of the cable/telco cross-ownership ban, allowing local exchange carriers to directly provide video programming to subscribers within their local exchange service areas, has created a boom of telco investment in video programming delivery, from cable system overbuilds to wireless cable systems. Further, the revised definition of "cable system" in the 1996 Act will allow SMATV services to branch out from single stand-alone MDUs to serve adjacent buildings. The revised "effective competition" test should provide incumbent cable operators with flexibility to respond to greater competition wherever it is faced, to the ultimate benefit of consumers.

Accordingly, for all these reasons, the Commission should report to Congress that competition among video programming providers is thriving and growing, and that competitors to the cable industry are financially viable and competitively strong.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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COMMENTS OF TIME WARNER CABLE

Time Warner Cable ("Time Warner"), a division of Time Warner Entertainment Company, L.P., hereby submits comments on the Commission's Notice of Inquiry ("Notice") regarding the Commission's third annual report to Congress on the status of competition in the delivery of multichannel video programming.[1] Time Warner is a multiple system operator ("MSO") operating cable systems throughout the country.

In the Notice, the Commission seeks information to fulfill its statutory obligation under the 1992 Cable Act to report to Congress on the status of competition in the delivery of video programming.[2] As part of this survey, the Commission has asked not only for information on particular multichannel video delivery services and their impact on providing competition to incumbent cable operators, but also the impact that the passage of the

[1] Notice of Inquiry, CS Docket No. 96-133, FCC 96-265 (released June 13, 1996).

[2] Cable Television Consumer Protection and Competition Act of 1992, Pub.L.No.102-385, 106 Stat.1460 (codified as amended at 47 U.S.C. Sections 521, 548(g) (1992)) ("1992 Cable Act").

Telecommunications Act of 1996 ("1996 Act") is having on the development of such services and competition.[3/]

Time Warner faces substantial competition from a wide array of sources which compete for consumer entertainment and information dollars and attention. These sources include movies, videocassettes, broadcast television, Direct Broadcast Satellite ("DBS") service, Satellite Master Antenna Television ("SMATV") services, Multichannel Multipoint Distribution Service ("MMDS"), as well as sports events, books, magazines, newspapers and radio. Nevertheless, Time Warner will limit its Comments to the specific video technologies identified by the Commission as of greatest interest

As the Commission recognized in its 1995 Annual Report to Congress and in the Notice, video competition, even under the pre-1996 Telecommunications Act framework, had already begun to flourish.[4/] Services such as DBS, SMATV and MMDS were already making significant gains in subscribership across the country.[5/] Cable operators also faced an ever-increasing competitive challenge posed by increased investment and system deployments by the local exchange carriers ("LECs") operating competing wireline systems, especially video-dialtone ("VDT") systems,[6/] as well as substantial investments by LECs in wireless cable technologies such as MMDS.

[3/]Notice at ¶ 24.

[4/]Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, Second Annual Report, CS Docket No. 95-61, 11 FCC Rcd 2060, 2077 at ¶ 40 (1996) (citing Communications Act § 621(a), 47 U.S.C. § 541(a)) ("1995 Competition Report").

[5/]1995 Competition Report at ¶ 9.

[6/]Id.

The continuation of these developments in the past year, combined with the passage of the 1996 Act, ensures that competition for video programming delivery will continue to accelerate at a rapid pace. For example, under the new Title VI framework under the 1996 Act, existing LECs will have the flexibility to convert their VDT systems to either franchised cable systems or the new Open Video System ("OVS") option.[7] Such flexibility, combined with the new ability to directly provide video programming to subscribers over their systems, only makes entry into the video distribution business all the more attractive for the LECs. Indeed, since the passage of the 1996 Act, Time Warner has witnessed an escalation of activity and competition from all technologies offering alternative multichannel video programming service.

I. COMPETITION FROM WIRE-BASED SERVICE

A. Cable Overbuilds

In the 1992 Cable Act, Congress took action to promote overbuild competition. Section 621(a)(1) of the Communications Act now provides that "a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise."[8] As a result, according to the Commission, "there has been recent evidence that the trend (of overbuilding) is continuing."[9] For instance, in the past year, Ameritech has received franchises to overbuild the local cable systems in over 15 communities in Michigan, Ohio and Illinois, and is in the process of negotiating with at least

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[7] 47 U.S.C. § 573.

[8] 1995 Competition Report at ¶ 40.

[9] Notice at ¶ 15.

30 other municipalities regarding cable franchise overbuilds.[10] Indeed, Ameritech is already competing directly with Time Warner through a franchised overbuild in Columbus, Ohio. In June 1996, GTE converted an existing authorized VDT system to a cable franchise in Clearwater, Florida,[11] where Time Warner also offers cable services. Additionally, in the past year, BellSouth received a cable franchise to overbuild the cable system in Chamblee, Georgia,[12] and Southwestern Bell obtained a cable franchise to serve Richardson, Texas, a suburb of Dallas, and Pacific Bell was granted a cable franchise in San Jose, California.[13] In Connecticut, Southern New England Telephone is awaiting approval of a statewide cable franchise.[14]

These cable franchise overbuilds will be offering their own original programming in order to compete with establish cable programming networks. In fact, in the past year, Ameritech, BellSouth, GTE and SNET have contributed over $500 million to a joint venture with The Walt Disney Co. called Americast. This venture was created solely for the purpose of developing original programming to be delivered by the telcos' new video distribution

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[10] Communications Daily, April 24, 1996, at 6; Communications Daily, July 3, 1996, at 6; Television Digest, May 27, 1996, at 3; Communications Daily, July 3, 1996, at 6; Television Digest, March 18, 1996, at 4; Linda Young, "Court Eases Ameritech's Path to Cable TV," Chicago Tribune, June 20, 1996, at D1.

[11] Robert Trigaux, "GTE Officially Joins Battle in Cable TV," St. Petersburg Times, June 22, 1996, at E1.

[12] Television Digest, April 22, 1996, at 4

[13] "San Jose First California City to Get Cable TV Competition From Pacific Bell Video Services," Business Wire, June 25, 1996.

[14] "Southern New England Telephone Join Disney Led Video Venture," Communications Daily, June 19, 1996.

networks. As is clear from these developments, combined with the more favorable regulatory environment created by the 1996 Act, cable franchise overbuilds by telephone companies and others will continue to become increasingly common.

B. Grandfathered Video Dialtone Systems

While the 1996 Act sunsets the Commission's VDT rules,[15] this has not meant that VDT systems have disappeared from the competitive landscape. The 1996 Act also grandfathered the Commission's existing VDT rules for existing systems, at least until the new OVS regulatory framework is implemented,[16] leaving approximately twenty VDT systems still authorized to operate under the old grandfathered VDT rules. Many systems are moving forward. For example, Bell Atlantic has proceeded with large-scale rollouts of VDT systems in Dover Township, New Jersey and in the Washington, D.C. suburbs. Indeed, Time Warner faces competition from similar such systems, e.g., Time Warner's cable system serving Wake Forest, North Carolina has been overbuilt by a grandfathered VDT system operated by Sprint Telephone.[17]

Despite the sunset of VDT regulations, the VDT regulatory structure was made even more attractive recently due to the Commission's decision this past year to eliminate the separate price cap basket rules for VDT systems.[18] These changes will allow VDT

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[15] 1996 Telecommunications Act at Sec. 302(b)(3).

[16] Id.

[17] Fred Dawson, "Sprint Corp. Boasts 65% Base in N.C. VDT Trial" Multichannel News, January 29, 1996, at 3.

[18] 1996 Annual Access Tariff Filing Price Cap Performance Review For Local Exchange Carriers Treatment Of Video Dialtone Service Under Price Cap Regulation, DA 96-434 (Rel. March 15, 1996).

systems to be fully cross-subsidized from their parents' telephone service offerings, and will effectively eliminate the requirement that the parent maintain a structurally separate subsidiary in order to provide VDT service. While there is uncertainty as to whether these existing systems will convert to the OVS regulatory structure once it is implemented, or as in GTE's Clearwater, Florida VDT operations, whether they will be converted to franchised cable systems, the systems operated by the telcos under the VDT rules will continue to present consumers with a competitive wireline alternative to the incumbent cable systems.

C. Open Video Systems

Section 653 of the 1996 Act provides for the establishment of OVS systems[19] which are intended to be the successor to video dialtone.[20] OVS will allow LECs to offer video services free from any common carrier regulations, almost all cable regulations and any cable franchising requirements.[21] With such relaxed regulation, many entrants are likely to pursue the OVS option.[22]

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[19] 47 U.S.C. § 573.

[20] "Open Video Systems Watched Closely," Interactive Video News, April 15, 1996. As a result, our Comments will not address video dialtone's effect on competition in video programming.

[21] Chris McConnell, "Open Video Systems Open to Debate," Broadcasting & Cable, April 8, 1996, at 18. The cable rules not applicable to OVS include leased access obligations, franchise requirements, rate regulation, and consumer protection and customer service obligations. Second Report and Order, CS Docket No. 96-46, FCC 96-249 (released June 3, 1996) at ¶ 8.

[22] "US FCC Has Rules For Phone Cos. to Offer Cable TV," Reuters, June 3, 1996.

American consumers could be harmed without adequate OVS ground rules.[23/] Phone companies offering programming through OVS, as currently constituted, would be relieved of such consumer protections as "local government oversight for service quality and consumer complaint procedures."[24/] Also, OVS provides the telephone companies with the enticing opportunity to cross-subsidize.[25/]y These concerns are particularly acute given the Commission's current position that LECs do not have to make appropriate modifications to their cost allocation manuals prior to seeking OVS certification. While, as of this filing, no OVS applications have been filed, Time Warner is very concerned that with only five days for interested third parties to review OVS applications, such a hasty review period is likely to result in unfair competition from OVS providers. Accordingly, sensible rules and regulations are necessary to ensure that fairness prevails in the OVS context.

II. COMPETITION FROM SATELLITE DELIVERED SERVICES

A. Direct to Home Satellite Services

Cable operators are facing considerable competition from both high-powered direct broadcast services ("DBS") and from low-powered C-band home satellite dish ("HSD") services. DBS providers offer multichannel video service directly to consumers via a small satellite receiving dish at prices intended to be competitive with cable service. DBS providers offering up to 150 channels of cable-type programming are now available to

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[23/] See Chris McConnell, supra n. 21.

[24/] "Open Video Rules Watched Closely," Interactive Video News, April 15, 1996, (referring to the comments of Alliance for Community Media Executive Director, Barry Forbes).

[25/] "Telcos Attack OVS Rules," Television Digest, June 17, 1996, at 5.

virtually every home in the continental United States. DBS providers deliver almost every program network offered on cable, including all of the most popular cable programming networks. Moreover, the past year has seen the price of DBS satellite receivers drop quickly as competition intensifies between the services and among the many dish providers. For example, just as with cellular phones, many DBS services have begun to bundle the cost of the dishes with the service itself, allowing many to obtain dishes at little or no up front payment in exchange for a commitment to a long-term service contract, thus allowing the DBS providers to subsidize equipment costs through service revenues.[26/]

The increase in DBS service options and the drop in dish prices has spurred a continued increase in DBS subscribership. The FCC itself has acknowledged that DBS subscribership has "increased rapidly."[27/] It is estimated by some sources that there are almost 5 million DBS subscribers currently.[28/] Indeed, this figure is expected by some to expand by more than 400%, to as high as 21 million in less than four years.[29/] Further developments portend continued DBS growth. Monthly DBS service costs are highly competitive,[30/] and are declining rapidly with nearly a dozen companies, including

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[26/]Upon implementation of rules to implement Sec. 304 of the 1996 Act, such bundling and cross-subsidization would apparently be prohibited. See 47 U.S.C. § 548(a).

[27/]1995 Competition Report at ¶ 49. Charles Paikert, "DBS Boom Spotlights Pay-Operators Split," Multichannel News, January 22, 1996, at 34.

[28/]Russell Shaw, "Special Report: DBS Goes After Cable Audience With Pricey Promotion Drive," Electronic Media, April 22, 1996, at 22.

[29/]"'Tornado' Sweeps Telecoms," Television Digest, June 17, 1996, at 5 (citing comments of Satellite Broadcasting & Communications Association President, Harry Thibedeau); 1995 Competition Report at ¶ 50.

[30/]Id.

behemoths such as AT&T, MCI and News Corp. recently entering the DBS business.[31] For example, AT&T, in a partnership with DBS provider Hughes (DirecTV), has begun an aggressive 50-state marketing and advertising campaign that will offer DBS service discounts, programming packages and DBS equipment financing deals to its long-distance customers.[32] Soon, even Amway will even be selling DBS services door-to-door.[33]

In addition to DBS, today more than 4.5 million C-band home satellite dishes ("HSDs") are used nationwide.[34] In 1995 alone, nearly 200,000 units were sold.[35] HSDs have been providing American consumers with a large number of entertainment options[36] for over 25 years and there appears to be no slowdown in their use. Both DBS and HSD appear to appeal to commercial customers such as restaurants and bars, who are particularly attracted to such services' access to a wide range of sports programming. Thus, both DBS and HSD comprise a vibrant direct-to-home satellite dish business which continues to attract consumers.

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[31] See 1995 Competition Report at ¶ 52; Dennis Wharton, "DBS deal may see Latin help," Daily Variety, July 29, 1996, at 1.

[32] John J. Kellner and Mark Robichaux, "AT&T Plans 50-State Marketing Blitz For DirecTV in Latest Assault On Cable" Wall Street Journal, June 24, 1996.

[33] Dennis Wharton, supra n. 31.

[34] Lee Hall, "Special Report: Satellites: Dishing it out," Electronic Media, April 22, 1996, at 21 (citing Satellite Business News).

[35] "Satellite Dealers Courted," Consumer Electronics, March 11, 1995, at 18.

[36] Actually, HSD owners have access to more than 400 channels of programming. 1995 Competition Report at ¶ 61

B. SMATV

There has also been an increase in the presence of Satellite Master Antenna Television ("SMATV") systems in recent years. In order not to qualify as a cable system, SMATV systems have generally been restricted to serving single residential, multiple dwelling units ("MDUs") and various other commonly-owned buildings and complexes where service could be provided without reliance upon facilities which occupy public rights-of-way. Prior to the passage of the 1996 Act, SMATV was defined as an exception to the definition of a cable system.[37] In order to qualify as a SMATV system, and therefore not be subject to local franchise requirements, a system could not (1) serve buildings that are not commonly owned, controlled, or managed, or (2) have facilities that crossed a public right-of-way. Because of these restrictions, SMATV was limited primarily to serving single large residential MDUs in urban areas.

However, under the 1996 Act, the definition of a cable system was narrowed to exempt any closed video distribution facilities that do not occupy public rights-of-way.[38] A SMATV system can now expand service from a single MDU to adjacent MDUs with different owners without obtaining a local cable franchise or becoming subject to cable regulation under Title VI of the Communications Act, as long as its signals are not delivered via facilities which occupy public rights-of-way. This change provides a significant advantage to SMATV operators in competing for service to MDUs.

For example, in early April 1996, an 80 percent interest in so-called SMATV operator Liberty Cable was sold for over $60 million to a unit of Peter Kiewit and Sons, a

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[37] 47 U.S.C. § 522(7)(B) (amended 1996).

[38] 47 U.S.C. § 522(7).

Nebraska conglomerate.[39] Kiewit's businesses, including construction and communications, generate more than $3 billion in annual revenues.[40] Kiewit built, and subsequently spun-off, competitive access provider MFS Communications[41] and has substantial investments in RCN Corporation, "a fast growing telephone service provider"[42] and C-Tec, which owns several cable television and telecommunications properties.[43]

According to the Commission, approximately 3,000 to 4,000 SMATV systems served 850,000 SMATV subscribers in 1994 and 950,000 subscribers in 1995.[44] SMATV growth may be attributed to "the fact that SMATV operators may be able to deliver video programming for less cost than cable operators,"[45] SMATV's penetration into new areas, and SMATV operators' offerings of security, private telephone and digital services.[46] Demonstrated subscriber growth has spurred interest by global heavyweights including

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[39] Anthony Ramirez, "Cable Wars: Liberty Gets Ally," New York Times at Section 13, Page 6. In fact, the New York State Commission on Cable Television issued an order to Liberty to show cause why it was not a cable operator by virtue of its having connected multiple buildings by wire over public rights-of-way. Order to Show Cause, New York State Commission on Cable Television, Docket No. 90460 (August 23, 1994).

[40] Id.

[41] Id. One or more attributable entities appear to retain common interests in Kiewit and MFS.

[42] Gregory Zuckerman, "Liberty Cable Sells at Last," New York Post, April 2, 1996, at 28.

[43] Kent Gibbons, "Sale of Telco Firm Scuttles TCI Competition Bid," Multichannel News, January 23, 1995, at 10.

[44] 1995 Competition Report at ¶ 106.

[45] Id. at ¶ 107.

[46] Id. at ¶ 111.

General Electric, MCI and Sony.[47] Indeed, Sony recently indicated it will "market SMATV systems aggressively to multi-unit dwellings, providing competition to cable systems. Sony estimated [the] the potential market for its 18-inch satellite receivers at up to 20 million dwelling units."[48] With some 1 million subscribers, new deep pocketed players and anticipated innovations, the SMATV growth trend will most likely continue.

III. COMPETITION FROM WIRELESS SERVICES

A. MMDS

Over the past year, MMDS service, or "wireless cable" continued to experience rapid growth and development. In fact, the past year has seen the most significant influx of capital into "wireless cable" in the industry's history. The most significant investors are three local exchange carriers, Bell Atlantic, NYNEX, and Pacific Bell, which through direct investments in existing systems and aggressive participation in at the MMDS auctions have obtained access to over 20 million potential video customers in many large metropolitan areas. For example, Bell Atlantic and NYNEX have recently invested $100 million in CAI Wireless Systems ("CAI"). Bell Atlantic's and NYNEX's combination of passive and beneficial interests effectively equates to a 45% equity share in CAI.[49] In addition, Bell Atlantic and

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[47] 1995 Competition Report at ¶ 107; "Satellite TV," Satellite Week, March 4, 1996.

[48] "Satellite TV," supra n. 48.

[49] Through their BANX Partnership, Bell Atlantic and NYNEX hold a ownership substantial interest in CAI, including:

- 14% Term Notes convertible to Senior Preferred Stock at the option of Bell Atlantic and NYNEX.

(continued...)

NYNEX, through CAI, have entered into a partnership with Heartland Wireless, which extends their wireless cable reach outside of their local telephone exchange service areas. This partnership, CS Wireless, allows Bell Atlantic and NYNEX to currently serve 50,000 video consumers in such out of region metropolitan areas as Cleveland, Minneapolis, Kansas City, Dallas, San Antonio, and Bakersfield, and to potentially serve over 6 million others.[50]

Other telcos have also made significant investments in wireless cable. In the last year, PacTel has entered into a number of transactions purchasing many existing MMDS licenses and systems, primarily in California, and recently paid $20 million in the FCC auction for many of the remaining West Coast service areas.[51] In addition, just recently, PacTel purchased the existing wireless cable license rights to the Los Angeles service area from Heartland, giving PacTel almost exclusive wireless cable coverage of the entire

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[49](...continued)

- 7,000 shares of Senior Preferred Stock.

- Warrants to purchase Common Stock and Voting Preferred Stock. BANX paid CAI $100 million in cash, in two stages during 1995, to purchase the Term Notes and the Warrants.

- The right of Bell Atlantic and NYNEX to convert the Term Notes and exercise their options, after which they would together control 45% of the fully diluted stock of CAI

Indeed, in a 13-D filed with the SEC on October 12, 1995, Bell Atlantic/NYNEX concede that they hold a beneficial interest in 45.3% of the CAI common shares.

[50]CS is owned 54% by CAI Wireless Systems, Inc. ("CAI"), 35% by Heartland Wireless Communications Inc. and 4.95% each by affiliates of Bell Atlantic and NYNEX. Even though the direct LEC equity in CS is slightly below 10%, because Bell Atlantic and NYNEX have substantial beneficial ownership interests in CAI.

[51]"FCC Says Big Telecoms Led Wireless Cable Bidding," Reuters, March 29, 1996.

Southern California region.[52] PacTel has also made significant investments outside its local exchange service area, and will now be able to serve such metropolitan areas as Tampa, Seattle, Spokane and Greenville, South Carolina. Finally, less than three months after the auction's conclusion, BellSouth paid $12 million for the wireless cable license rights for New Orleans.[53]

Other more traditional wireless cable players, such as Heartland Wireless, also made significant inroads to serving larger audiences with their MMDS service. These investments, combined with a streamlining of Commission application procedures, a strengthening of incumbent MMDS licensees' defined service areas, and the certainty to new entrants provided by BTA-wide authorizations, serve to make wireless cable an even more potent video programming competitor.

The momentum of wireless cable can be demonstrated by its rapid growth. According to the Wireless Cable Association, "there are currently 900,000 [wireless cable] subscribers and 200 systems in this country."[54] Wireless cable's subscriber base will likely increase to 1.25 million by the end 1996, then double in 1997.[55] In fact, Paul Kagan & Associates anticipates that wireless cable subscribership will reach almost 6 million by the

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[52] Communications Daily, June 26, 1996, at 12

[53] "BellSouth Buys Rights to Wireless Cable Licenses in New Orleans," Telco Business Report, June 3, 1996.

[54] Michael Katz, "Special Report: Wireless Cable: WCA on the Fast Track," Broadcasting & Cable, July 8, 1996, at 35.

[55] Jim McConnville, "Wireless Looks to Digital Edge," Broadcasting & Cable, April 1, 1996, at 52 (citing John Mansell, Senior Analyst at Paul Kagan & Associates).

year 2000.[56] With the predicated ability of digital transmission to deliver hundreds of channels, rather than merely the thirty or so channels currently available, these numbers will surely be exceeded.[57]

For predicting the future of wireless cable, the significance of the recent MMDS auctions combined with the investments by the LEC's can not be understated. Recently, the Commission completed auctions of exclusive rights to develop wireless cable in unserved areas in each Basic Trading Area ("BTA") across the country. Over 67 companies acquired the rights to provide wireless cable in 493 different service areas.[58] The Commission raised over $239 million in this auction, demonstrating the perceived growth potential for wireless cable technology. Most notably, the largest bidders were affiliates of cash-rich telephone companies who, even prior to the auctions, had begun to make large investments in the service. For example, CAI Wireless Systems was the auction's largest bidder, paying almost $50 million for the rights to 32 service areas including New York, Washington, Philadelphia, Boston and Atlanta.[59]

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[56] Id.

[57] Recently, the Commission established standards by which the MMDS industry can provide digital transmission over their systems, effectively opening the door to the reality of over 100 channels provided to consumers. Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations, Declaration Ruling and Order, DA 95-1854 (Released July 10, 1996).

[58] "The FCC Last Week Wrapped up Its Auction of Wireless Cable Frequencies," Broadcasting & Cable, April 1, 1996, at 80. See also Jube Shiver, Jr., "PacTel Unit Bids Total of $21 Million for Wireless Cable," Los Angeles Times, March 29, 1996, at D1 (indicating that $216.3 million was raised by the wireless cable auction).

[59] Jube Shiver, Jr., supra n. 58. Michael Katz, "BA, Nynex Moving to Digital Wireless," Broadcasting & Cable, July 8, 1996, at 38

The 1996 Act allows cable operators to respond to such substantial competitors by adding a new definition of "effective competition," whereby a cable system is considered subject to effective competition, and therefore exempt from rate regulation and rate uniformity, where

> a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.[60/]

This definition encompasses many of the telco-backed wireless cable systems mentioned above. Cable systems subject to this definition are able to respond by realigning their service packages and reducing their rates in specific areas within their franchises to meet competition, to the benefit of consumers, freed from regulatory restraints. Indeed, Time Warner was the first cable operator to file petitions for deregulation with the Commission under this new statutory provision and intends to rely on its deregulated status to provide consumers with a strong competitive option.[61/] Time Warner's petitions regarding CAI Wireless and CS Wireless demonstrated that Bell Atlantic and NYNEX were clearly affiliated with these wireless operators under the new effective competition definition.[62/]

[60/] Telecommunications Act of 1996, at Sec. 301(b)(3).

[61/] See, e.g., CSR-4748-E (Bakersfield, CA et al.); CSR-4753-E (Columbus, OH et al.); CSR-4758-E (Albany, NY et al.).

[62/] See id.

B. Broadcast Television

Free, over-the-air broadcast television continues to represent consumers' most commonly chosen alternative to cable service. Over 25 percent of all consumers choose broadcast television rather than subscribe to <u>any</u> multichannel video programming distributor, including cable. In fact, broadcast television programming continues to be the most watched source of video programming in our country. Between 1985 and 1995, the number of "on-air" television stations increased from 1,194 to 1,544.[63] In addition, two new broadcast networks, The WB Television Network and the United Paramount Network commenced broadcast operations less than two years ago.[64]

In the 1995-96 television season, the broadcast networks accounted for a combined 65% share of prime time viewing among all television households.[65] Additionally, broadcasting continues to be a hugely profitable business as advertising revenues amounted to some $28 billion in 1995 alone.[66] Furthermore, videocassette recorders ("VCRs") greatly enhance the attractiveness of broadcast television, by permitting viewers to "time shift," by recording a program when it is broadcast, but viewing the program at a later, more convenient time.[67] Clearly, because of broadcast television's free distribution, broad

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[63] <u>1996 Broadcasting & Cable Yearbook</u> at C-244.

[64] <u>Id</u>.

[65] Cynthia Littleton, <u>Broadcasting & Cable</u>, May 27, 1996, at 10.

[66] Steve McClellan, "Broadcasting Revenue Up 3% in 1995," <u>Broadcasting & Cable</u>, March 4, 1996, at 27.

[67] Additionally, as noted above, the widespread availability, both by sale and rental, of a vast array of prerecorded videocassettes, covering every conceivable programming genre, in itself presents a potent competitive alternative to cable television.

appeal, and vast audience and resources, it will continue to be a primary video entertainment option for American households.

CONCLUSION

As the Commission recognized in the Notice and in its 1995 Annual Report to Congress, cable has been facing ever-increasing competition from overbuilders (who were given a boost from the 1992 Cable Act), SMATV, DBS, MMDS and other competitors. The 1996 Act will surely accelerate competition for video programming delivery. The repeal of the cable/telco cross-ownership ban, allowing local exchange carriers to directly provide video programming to subscribers within their local exchange service areas, has created a boom of telco investment in video programming delivery, from cable system overbuilds to wireless cable systems. The revised definition of "cable system" in the 1996 Act will allow SMATV services more easily to branch out from single stand-alone MDUs to serve adjacent buildings. Finally, the revised "effective competition" test will ensure that incumbent cable operators have the flexibility to meet real competition wherever it is faced, to the ultimate benefit of consumers.

For all these reasons. the Commission should report to Congress that competition among video programming providers is thriving and that competitors to the cable industry are financially viable and competitively strong.

Respectfully submitted,

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